

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

BOBBY CULPEPPER	§	
v.	§	CIVIL ACTION NO. 6:18cv516
MATT BINGHAM, ET AL.	§	

MEMORANDUM ORDER OVERRULING PLAINTIFF'S OBJECTIONS AND ADOPTING
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

The Plaintiff Bobby Culpepper, a prisoner of the Texas Department of Criminal Justice, Correctional Institutions Division proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged deprivations of his constitutional rights. This Court referred the matter to the Honorable John D. Love, United States Magistrate Judge, for consideration pursuant to applicable laws and orders of this court.

Plaintiff sued the District Attorney and an assistant district attorney of Smith County as well as his defense attorney, asking that the criminal charges against him be dismissed and seeking compensatory and punitive damages. After review of the pleadings, the magistrate judge recommended dismissal of the lawsuit because Plaintiff cannot have his conviction set aside through a civil rights lawsuit, the district attorneys are immune from monetary damages for actions taken in their prosecutorial capacities, his defense attorney is not a state actor, and he cannot obtain monetary damages relating to the validity of his conviction until the conviction is overturned or set aside, which has not occurred. The court has received and considered the Report and Recommendation of the United States Magistrate Judge, along with the record, pleadings and all available evidence.

Plaintiff filed objections to the magistrate judge's Report and Recommendation arguing that his conviction denied him due process of law, the prosecutors lied to the jury, his defense attorney failed to object, and the prosecutors and defense counsel were seen by Plaintiff's mother laughing

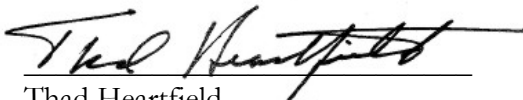
about the trial together together as they walked out of court. Plaintiff's objections did not address the issues of immunity, state action, or the availability of relief while the criminal case remained pending, which issues formed the basis of the magistrate judge's Report.

The court conducted a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b). After careful consideration, the court concludes Plaintiff's objections lack merit.

ORDER

Accordingly, Plaintiff's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct and the report of the magistrate judge is **ADOPTED**. The lawsuit is **DISMISSED** with prejudice for purposes of proceeding *in forma pauperis* as frivolous and for failure to state a claim upon which relief may be granted. The dismissal of this lawsuit shall not prevent the Plaintiff from pursuing any legal challenges to his conviction as may be available, including but not limited to a direct appeal through the appellate courts of the State of Texas, a habeas corpus application in the courts of the State of Texas under Tex. Code Crim. Pro. art. 11.07, or an application for habeas corpus relief in federal court once all state remedies have been exhausted.

SIGNED this the **23** day of **May, 2019**.


Thad Heartfield
United States District Judge